

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

ORDER

Plaintiff,

v.

07-cr-124-bbc

CURTIS POWELL,

Defendant.

Defendant Curtis Powell has moved for a sentencing reduction under 18 U.S.C. § 3582. He contends that because he was sentenced for possession with intent to distribute cocaine base (crack cocaine) and the guidelines for crimes involving distribution of crack cocaine have been lowered and given retroactive effect, he is entitled to a reduction in his sentence. He is mistaken.

Defendant was sentenced on February 28, 2008 to a term of imprisonment of 126 months. His sentence was based on a total offense level of 31 and a criminal history category of IV, resulting in a guideline imprisonment range of 151 to 188 months. Defendant was held accountable for a drug quantity of 311.76 grams of cocaine base.

On May 11, 2009, defendant filed a motion for modification of his sentence under 28 U.S.C. § 3582, which was denied on July 21, 2009 because at sentencing the new guidelines containing the reduction were in effect and were applied to defendant. Because he had received the benefit of the guidelines reduction, he was not eligible for a second reduction.

Under the most recent retroactive amendment, defendant's total offense level remains at 31, with the same guideline range of 151-188 months. Because the amendment does not have the effect of lowering defendant's guideline range, relief under § 3582 is not authorized. In addition, the Fair Sentencing Act does not apply retroactively to any defendant sentenced before August 3, 2010, United States v. Bell, 624 F.3d 803 (7th Cir. 2010) and any aspect of his sentence unaffected by a retroactive change to the applicable guideline range is outside the scope of § 3582 proceedings.

ORDER

Defendant Curtis Powell's motion for a reduction of sentence under 18 U.S.C. § 3582

is DENIED.

Entered this 29th day of February, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge